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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re A.J., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.J., Defendant and Appellant.	A154746 (San Mateo County Super. Ct. No. 18JW0045)

A.J. appeals from a dispositional order entered in a proceeding commenced pursuant to Welfare and Institutions Code section 602. He contends the court erred by excluding evidence of his post-traumatic stress disorder (PTSD) as a defense to allegations that he committed a robbery. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

A juvenile wardship petition alleged that A.J. committed second degree robbery. (Pen. Code, §§ 211, 212.5, subd. (c).)

At a contested jurisdictional hearing, the victim testified that he noticed A.J., a fellow student at his school, walking behind him on December 29, 2017, with a leashed dog. The victim and A.J. acknowledged each other without saying anything, and they continued across a street. After crossing the street, A.J. stopped and gave the dog to a friend while the victim continued walking straight. A.J. ran toward the victim from

behind, pushed him to the ground, jumped on top of him, and punched him "hard" in the head about 10 times. While he punched him, A.J. asked the victim if he was a member of the gang referred to as "VNL," which the victim denied. A.J. "yanked off" the victim's shoe, which had been tied. He picked up the victim's prescription glasses, which had fallen off when he pushed the victim down. A video of the incident, recorded by the friend to whom A.J. had handed the dog, showed A.J. hitting the victim and running away with his shoe. The video was later posted on Instagram with the caption, "fuck a wannabe VNL."

In an interview with police, A.J. stated that he was angry with the victim before the attack because of issues in the past, and the victim made him angry on the day of the attack by staring at him. He therefore accused the victim of "talking shit" and assaulted him. A.J. claimed he took the victim's shoe and glasses "in the moment" because he was mad at him, and later threw the shoe and glasses in a trash can.

At the hearing, A.J. testified that the victim gave him a "disgusted look," "talked bad things about [him] under his breath," and called him a "bitch ass nigga" while he and the victim were waiting to cross the street. This made A.J. angry due to incidents in the past. He felt angry, nervous, scared, and "weak," and he wanted to stand up for himself. He was still mad by the time they finished crossing the street. He saw a friend and gave him his dog and his "stuff," and said he was going to fight the victim because he was mad. A.J. ran up to the victim, said "why [are you] talking shit," and pushed him, and the victim fell. He hit the victim more than five times. A.J. testified: "Without thinking, after I stopped hitting him, I said, 'fuck your stuff,' and I saw glasses on the ground and I picked them up and I took a shoe, in the moment." A.J. denied planning or intending to take the victim's "stuff" or glasses up through the time he was hitting him. After he took the shoe and glasses, A.J. walked away, met up with his brother, and threw the items in the trash.

At the conclusion of the jurisdictional hearing, the juvenile court found the robbery allegations true. At a dispositional hearing, the court committed A.J. to juvenile hall for one year and placed him on probation.

This appeal followed.

II. DISCUSSION

A.J. contends that his intended primary "defense" to the robbery allegations was that he suffers from PTSD and his condition affected his mental state when he took the victim's shoe and glasses, such that he did not possess the required intent for a robbery. We first consider defense counsel's proffer of the evidence.

A. Background

After the prosecution's case, defense counsel sought to call A.J.'s social worker and psychotherapist, Cecilia Barbarena Carrillo (Carillo), as an expert witness to testify about A.J.'s mental condition in relation to the specific intent needed for robbery. If Carrillo's testimony were allowed, counsel would have also called A.J.'s brother to testify to one or more prior incidents from which A.J. allegedly developed PTSD.

Defense counsel proffered that Carrillo "diagnosed [A.J.] with PTSD and can talk about the different symptoms and things that he goes through when—when he has those symptoms." Counsel referred to A.J.'s "history of being attacked several times, being stabbed, being beaten," for which he received therapy. Counsel also stated that Carrillo's "treatment of the minor and her diagnosis of the minor will explain why somebody would behave that way simply because they heard somebody say some words or look at them the wrong way."

The prosecution filed a motion to exclude Carrillo's testimony as irrelevant due to the lack of any causal connection between PTSD and the attack. It also argued that the testimony was prohibited by Penal Code sections 28 and 29, which preclude testimony as to a defendant's capacity to form the mental state requisite for a crime, as well as expert testimony as to whether the defendant actually formed such intent.

Defense counsel clarified that Carrillo would testify to A.J.'s PTSD diagnosis and symptoms associated with his condition, which would support an argument that he lacked the required intent (without her specifically testifying that he lacked the intent). Counsel asserted that PTSD has caused A.J. to suffer from "anxiety, arousal, avoidance," a "fight-or-flight response," and "flashbacks."

The court granted the prosecutor's motion to exclude Carrillo's testimony as irrelevant, since nothing in the proposed testimony about A.J.'s diagnosis and symptoms related to his intent at the time of the crime.

After A.J. testified, defense counsel asked the court to reconsider its ruling. Counsel argued that evidence of his PTSD symptoms would explain why he was so angry at the victim, even though most of his prior negative encounters had involved the victim's friends rather than the victim himself. In addition, counsel argued, Carrillo's testimony "would elucidate the ways that PTSD effects a person's thought process and would show why it is—would provide evidence that he did not form the intent to steal before—during the use of force if, in fact, he was having flashbacks as he testified to." The court denied the request, finding that the proposed testimony was irrelevant and more time consuming than probative.

Defense counsel tried yet again before the close of evidence, contending Carrillo would testify that PTSD could potentially cause "people" to go into a "dissociative state," act impulsively, and have flashbacks to a past stressful experience. The court again found the proffered testimony irrelevant. It also excluded the proposed testimony of A.J.'s brother, since it was directly related to, and merely foundational for, the expert's testimony.

B. Law

Evidence of a mental disease, mental defect, or mental disorder is not admissible "to show or negate the capacity to form any mental state" including intent, but it may be admissible to show whether the defendant actually formed a required specific intent. (Pen. Code, § 28, subd. (a).) However, an expert witness shall not testify as to whether the defendant had the required specific intent, because that issue is for the trier of fact. (Pen. Code, § 29.) Taking these two sections together, the statutes allow an expert witness to opine as to the defendant's mental condition at the time of the offense, but not as to the defendant's capacity to have the required intent (§ 28), or whether the defendant actually had the required intent (§ 29), for the charged crime. (*People v. Pearson* (2013) 56 Cal.4th 393, 451; *People v. DeHoyos* (2013) 57 Cal.4th 79, 120.)

To introduce evidence of the defendant's mental condition, however, the evidence must first be relevant, in that the mental condition bears a nexus to the offense. (*People v. Coddington* (2000) 23 Cal.4th 529, 582 ["Sections 28 and 29 permit introduction of evidence of mental illness *when relevant* to whether a defendant actually formed a mental state that is an element of a charged offense"], italics added.) So we next turn to whether A.J.'s PTSD had a nexus to the elements of robbery.

C. Analysis

To prove robbery, the prosecution had to show the "felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) "Felonious" in this context means a taking with intent to steal, which is satisfied by an intent to permanently deprive the owner of the property. (*People v. McGee* (2006) 38 Cal.4th 682, 688.)

It was reasonable for the court to conclude that A.J.'s alleged PTSD was not relevant to the elements of robbery, including the element of having the specific intent to deprive his victim permanently of his shoe and glasses. Defense counsel represented that the expert would testify that A.J.'s PTSD symptoms were "anxiety, arousal, avoidance," a "fight-or-flight response," and "flashbacks," but there was no proffer that the expert would testify that these symptoms could have affected the likelihood that A.J. formed an intent to permanently deprive the victim of his possessions. Moreover, there was no evidence that A.J. actually displayed any of those symptoms when he took his victim's property by force, left the scene, and threw the items in the trash. Although A.J. testified that before, during, and after he *crossed the street* he remembered past incidents in which the victim and his friends said "bad things" to him and the victim's friend beat him up, he only testified that he was "mad" when he was hitting the victim and taking his things.

Defense counsel further represented that Carrillo would testify that PTSD can cause "a person" to enter a dissociative state. However, there was no evidence that a dissociative state was one of *A.J.'s* symptoms, and no evidence that A.J. was in a dissociative state at the time of the offense. A.J. did not testify that he acted

unconsciously or lacked a recollection of what occurred, but instead recounted the events in a way that reflected substantial self-awareness and a clear perception of what happened. According to A.J., after the victim supposedly stared at him and muttered "bitch ass nigga," A.J. realized his own anger and desire to stand up for himself, handed his dog and "stuff" to a friend, and attacked the victim from behind, asking why he was "talking shit." While he hit him, he felt adrenaline and anger. Revealing his intention to take the victim's property, A.J. stated, "Fuck your stuff" and then took the victim's stuff—a shoe off of his victim's foot, and his glasses—and held on to them until, at some time and distance away, he threw them into a trash can.

Defense counsel also represented that the expert would testify that PTSD can cause people to act impulsively, and A.J. testified that he took the shoe and glasses "in the moment," he did not really want them, and he did not think about them between the time he took them and the time he threw them away. But none of that evidence suggests a dissociative state—or any other PTSD symptom—contrary to A.J. intending to permanently deprive the victim of his property. Even if he only decided "in the moment" to take the victim's shoe, he fulfilled his desire by forcibly taking it off of his victim's foot, leaving the scene with it, and throwing it in the trash.

A.J. relies on three cases in which the court ruled that an expert may testify about a defendant's PTSD, his symptoms, and the effect those symptoms might have for the defendant. (*People v. Cortes* (2011) 192 Cal.App.4th 873 (*Cortes*); *People v. Herrera* (2016) 247 Cal.App.4th 467 (*Herrera*); *People v. Nunn* (1996) 50 Cal.App.4th 1357 (*Nunn*). These cases are distinguishable for multiple reasons.

First, none of the cases addressed the issue here: whether PTSD evidence is *relevant* given the victim's and defendant's testimony of what occurred. Instead, those cases addressed how much an expert could say *under sections 28 and 29* about the potential effect of the defendant's PTSD on his mental state, when the relevance of the evidence was not questioned. (*Cortes, supra,* 192 Cal.App.4th at pp. 909–912; *Herrera, supra,* 247 Cal.App.4th at pp. 475–478; *Nunn, supra*, 50 Cal.App.4th at p. 1365.)

Second, unlike here, the evidence in those cases suggested the defendant *was* in a dissociative state at the time of the crime. (*Cortes, supra,* 192 Cal.App.4th at pp. 888–889, 893–896 [where defendant had testified that he *did not remember* stabbing the defendant in the chest, merely watched his arm stab the victim in the back, and did not recall hearing anything during the knife fight, psychiatrist found that "in all likelihood, defendant entered a dissociative state in response to the 'extreme stress of a perceived life-threatening danger' "];[1] *Herrera, supra*, 247 Cal.App.4th at pp. 473–474 [defendant testified that, when a friend tried to perform a sexual act on him, it caused him to relive his prior trauma of being sexually molested, he "went nuts" and was in an "irrational state," stabbing his victim until the defendant "woke up"]; *Nunn, supra,* 50 Cal.App.4th at p. 1361 [defendant, who had experienced trauma related to his service during the Vietnam war, encountered a group of men who responded angrily to his requests, causing the defendant to fear an assault and fire his rifle to scare them away].)

Third, the mental state at issue in those cases was different than the mental state at issue here. For example, a defendant's entry into a dissociative or flashback state would be inconsistent with the idea that the defendant premeditated or deliberated a killing. (*Coddington, supra*, 23 Cal.4th at pp. 582–583.) But here, A.J.'s acting "in the moment" is not inconsistent with his forming an intent to permanently deprive the victim of his property as he pulled off and carted away the victim's shoe.[2]

In sum, the court did not abuse its discretion in concluding that Carrillo's proposed testimony regarding PTSD (and A.J.'s brother's proposed testimony about the prior traumatic events) was irrelevant. Nor did the court abuse its discretion in concluding that

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[1] The expert in *Cortes* opined that to "go into a dissociative state, the person has to perceive a major threat that is overwhelming, that life is at stake, and that there is no escape," and those conditions were present in the defendant's situation. (*Cortes, supra*, 192 Cal.App.4th at p. 901.) Not so here.

[2] A.J. also argues that Carrillo's testimony would have explained *why* A.J. assaulted the victim and reacted so negatively to the victim's insults. However, the fact A.J. had a motive for attacking his victim does not show that he lacked an intent to deprive the victim of his property.

any probative value of such evidence was substantially outweighed by the probability that its admission would necessitate an undue consumption of time. (Evid. Code, § 352.)

Finally, even if any error had occurred in the exclusion of the proffered PTSD evidence, it was harmless. The court obviously did not believe that PTSD affected A.J.'s mental state based on the victim's and A.J.'s testimony, even in light of defense counsel's proffer. From the testimony, the court concluded that A.J. formed the intent to steal by the time he started to assault the victim, and specifically found A.J. not credible in his testimony that he lacked an intent to steal before he took his victim's property. Indeed, the court observed, "if you watch the video [of the incident], when [A.J.] is running towards the video, and I think the other person who's filming it, they almost high-five each other or make some sounds that suggest like, hey, we did it, we made this guy hurt, we robbed him, we assaulted him, we used—beat him up, and we filmed it, to boot, and now we're going to display it on social media so everybody can see what we did." Nothing in the record suggests any possibility the court would have reached a different conclusion if it had admitted the PTSD evidence.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.